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Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts

Note by the Secretariat

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I. Case Law on UNCITRAL Texts (CLOUT)

Background

1. CLOUT continues to be one of the Secretariat's tools to promote the uniform interpretation and application of UNCITRAL texts, as it facilitates access to decisions and awards from many different jurisdictions. Furthermore, it contributes to the promotion of UNCITRAL legal texts since it demonstrates that the texts are being used and applied in many different countries and that judges and arbitrators at different latitudes are contributing to their interpretation. CLOUT also provides the basis for the analysis of interpretation trends that is a key part of the case law Digests. Background information on CLOUT and the Digests, is provided in the Provisional Agenda of the fifty-first session of the Commission (A/CN.9/927/Rev.1, para. 55).

2. At present, case law on the following texts is reported in the system:

- United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention);[1]
- Convention on the Limitation Period in the International Sale of Goods, 1974 and Convention on the Limitation Period in the International Sale of Goods as amended by the Protocol amending the Convention on the Limitation Period in the International Sale of Goods, 1980 (Limitation Convention);
- United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules);
- United Nations Convention on Contracts for the International Sale of Goods, 1980 (CISG);
- UNCITRAL Model Law on International Credit Transfers, 1992 (MLICT);
- United Nations Convention on Independent Guarantees and Stand-by Letters of Credit, 1995 (UNLOC);
- UNCITRAL Model Law on International Commercial Arbitration, 1985, as amended in 2006 (MAL);
- UNCITRAL Model Law on Electronic Commerce, 1996 (MLEC);
- UNCITRAL Model Law on Cross-Border Insolvency, 1997 (MLCBI);
- UNCITRAL Model Law on Electronic Signatures, 2001 (MLES); and
- United Nations Convention on the Use of Electronic Communications in International Contracts, 2005 (ECC).

3. Case law to be reported in CLOUT is provided by a network of national correspondents that, either as individuals or a specific organ or body, monitor and collect court decisions and arbitral awards and prepare abstracts of those considered relevant in one of the six official languages of the United Nations. The Secretariat collects the full texts of the decisions and awards in their original language and publishes them. The abstracts are edited and translated by the Secretariat into the official United Nations languages and published in all such languages as part of the regular documentation of UNCITRAL (under the identifying symbol: A/CN.9/SER.C/ABSTRACTS/...).

4. While the national correspondents are the principal support of the system, in agreement with the correspondents, contributions from scholars or institutions who

[1] The Commission may recall that at its forty-first session, in 2008, it agreed that, resources permitting, the Secretariat could collect and disseminate information on the judicial interpretation of the New York Convention (see *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17* (A/63/17), para. 360. A comprehensive database of case law on the New York Convention complementing CLOUT can be found at www.newyorkconvention1958.org (see paras. 16–19 below and *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 134–140).

are not appointed as national correspondents are also accepted, subject to control and prior notification to the relevant national correspondent, if appointed. This practice is consistent with the Commission's recommendation of utilizing all available sources of information to supplement the information provided by the national correspondents.[2] National correspondents meet every two years, when the Commission is in session in Vienna, to take stock of the latest developments and challenges of CLOUT maintenance and improvement.

Abstracts published and received

5. As at the date of this note, 190 issues of CLOUT had been prepared for publication, dealing with 1,752 cases from 69 jurisdictions.[3] The table below provides a breakdown by legislative text of those cases.

Legislative text	*Number of published cases*
CISG	904
CISG and Limitation Convention	4
CISG and Limitation Convention (amended text)	4
CISG and MLICT	1
CISG and MAL	1
MAL	455
New York Convention	210
New York Convention and MAL	4
MLCBI	112
MLEC	33
Limitation Convention	13 (Six cases relate to the Limitation Convention amended text)
Limitation Convention and MLEC	1
EEC	3
EEC and MLEC	1
Hamburg Rules	3
MLES	1
MLICT	1
UNLOC	1

6. With regard to the jurisdictions providing the abstracts, no meaningful changes can be recorded in respect of the figures provided last year (see para. 6, A/CN.9/906). The majority of the abstracts published referred to Western European and other States (63 per cent, approximately), while the other regional groups were represented as follows (all figures are approximate): Asian States (17 per cent), Eastern European States (13 per cent), Latin American and Caribbean States (3 per cent) and African States (3 per cent). A few abstracts pertained to awards of the International Chamber

[2] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17), para. 371.

[3] The jurisdictions include: Albania, Argentina, Australia, Austria, Belarus, Belgium, Benin, Bermuda, Bosnia and Herzegovina, Brazil, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Côte d'Ivoire, Croatia, Cuba, Czechia, Denmark, Egypt, El Salvador, European Union, Finland, France, Georgia, Germany, Greece, Hong Kong, China, Hungary, India, Iraq, Ireland, Israel, Italy, Japan, Kenya, Liechtenstein, Lithuania, Luxembourg, Mexico, Montenegro, Netherlands, New Zealand, Nigeria, Norway, Paraguay, Philippines, Poland, Portugal, Republic of Korea, Russian Federation, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Tunisia, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America and Zimbabwe.

of Commerce and one abstract related to a decision of the European Union Court of Justice.

7. Since its last Note to the Commission, the Secretariat received 129 new abstracts from national correspondents and voluntary contributors. The table below reflects the breakdown by text.

Legislative text	*Number of abstracts received*
CISG	55
CISG and Limitation Convention	3
CISG and Limitation Convention (amended text)	1
CISG and MAL	1
New York Convention	38
New York Convention and MAL	4
MAL	15
MLCBI	8
MLEC	2
Limitation Convention	2 (One case relates to the Limitation Convention, amended text)

The court decisions and the arbitral awards to which the abstracts refer were rendered in 28 jurisdictions.[4]

8. In the period under review, 91 abstracts were also published:

Legislative text	*Number of abstracts published*
CISG	35
CISG and Limitation Convention (amended text)	2
New York Convention	37
New York Convention and MAL	4
MAL	9
EEC	1
Limitation Convention	2 (One case relates to the Limitation Convention, amended text)
MLEC	1

For the first time, the Secretariat published abstracts from Greece, the European Union Court of Justice, Ireland and Paraguay.[5]

[4] The jurisdictions providing abstracts were as follows: Australia, Austria, Belgium, Bosnia and Herzegovina, Brazil, China, Colombia, Croatia, European Union Court of Justice, France, Germany, Greece, Hong Kong, China, India, Italy, Kenya, Mexico, New Zealand, Paraguay, Peru, Poland, Republic of Korea, South Africa, Spain, Switzerland, Ukraine, United Kingdom and United States of America.

[5] The Secretariat also published abstracts from the following jurisdictions: Australia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Brazil, China, Colombia, Croatia, France, Germany, India, Italy, Kenya, Mexico, Poland, Republic of Korea, Russian Federation, South Africa, Spain, Ukraine, United Kingdom and United States of America.

The network of national correspondents

9. The network of national correspondents was renewed in 2017[6]. The current network is composed of 84 national correspondents representing 34 States.[7] States that have not yet appointed national correspondents are encouraged to do so. Their term will be the same as for the correspondents appointed in 2017 and will thus expire in 2022.

10. As to the abstracts provided by the national correspondents since the Secretariat's last Note to the Commission, they represented approximately 33 per cent of the abstracts published. The remaining abstracts were received from voluntary contributors or prepared by the Secretariat.

Maintenance of the database

11. The Secretariat continued making available to users the full text decisions stored in the database's archives, while full texts of new case law received by the Secretariat were regularly uploaded upon receipt, providing there were no copyright or other restrictions by reason of the law of the State where the court decisions were rendered.

12. In the period under review, the CLOUT database received over 33,000 visitors. According to data provided by free web analytics services, most of the users would be located in China, United States of America, India, United Kingdom, Mexico, Spain, Egypt, Colombia, Australia and France.

13. At their meeting in 2017 (see para. 304, A/72/17), several national correspondents suggested improvements to the user-friendliness of the CLOUT database, in particular its search functions were said to be rather cumbersome. The Secretariat has looked into possible solutions, however they require resources (human and financial) currently not available to the Secretariat.

Information on CLOUT

14. The Secretariat continued posting information on CLOUT's latest releases on the UNCITRAL blog (under the "What's new at UNCITRAL?" pages) and the UNCITRAL LinkedIn account in order to provide an "alert" feature to CLOUT users and raise the visibility of the system at the same time. A Facebook page of the Commission being set up recently, the Secretariat also used that social media to share information about CLOUT.

15. In collaboration with the national correspondents the Secretariat finalized a third revision of the CLOUT User Guide and made it available in the six official languages of the United Nations on the UNCITRAL web-site. This new revision of the Guide is intended to provide more detailed guidance for the preparation of the abstracts. The User Guide is for the use of both national correspondents and voluntary contributors.

II. The Digests

16. At its fiftieth session, the Secretariat informed the Commission that the 2016 edition of the CISG Digest had been published as an e-book, in English, on the UNCITRAL website and that translation in the other official languages was ongoing (see para. 14, A/CN.9/906). The translation was finalized and the Digest is now available in all six official languages of the United Nations on the UNCITRAL website. Work to update the current edition of the MAL Digest progressed slowly in

[6] See A/CN.9/906, para. 8.

[7] States that have appointed national correspondents are: Algeria, Armenia, Austria, Bosnia and Herzegovina, Canada, Denmark, Ecuador, El Salvador, Finland, France, Gabon, Germany, Indonesia, Italy, Ivory Coast, Japan, Luxembourg, Mexico, Montenegro, New Zealand, Norway, Poland, Qatar, Republic of Korea, Serbia, Singapore, Spain, Switzerland, Sweden, Thailand, Turkey, Ukraine, United Kingdom and United States of America.

the period under review due to limited resources available to the Secretariat. Finalization of the MLCBI Digest was also ongoing.

III. A way forward for CLOUT

17. At its fiftieth session, the Secretariat drew the Commission's attention to the purpose and implementation of the CLOUT system and their currency at a time in which a wealth of well-established commercial and non-commercial legal resources, both online and on paper, greatly facilitated access to domestic and international case law, including case law that applied UNCITRAL texts (see para. 303, A/72/17). In this regard, the Commission noted that the Secretariat in consultation with CLOUT national correspondents, might provide more detailed information on possible ways to approach that matter for the Commission's consideration at its future sessions. Since in 2019 the biennial meeting of national correspondents will take place, the Commission might wish to consider a possible discussion on CLOUT's way forward at its fifty-second session, which might benefit from the participation of national correspondents.

IV. Promotion of uniform interpretation of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention)

18. The newyorkconvention1958.org website continued to expand, not only by way of increasing the volume of case law published on the application of the Convention, but also by way of adding information about the jurisdictions which have adopted the Convention.

19. In the period under review, the website reached a significant milestone with more than 2,000 decisions from 58 common law and civil law jurisdictions now publicly accessible online. Over the past few months, new jurisdictions were added to the website, including Algeria, Bolivia, Bulgaria, Ireland, Lebanon, Mauritius, Mexico, Morocco, the Netherlands, Nigeria, Paraguay, Qatar, Singapore, Slovenia, Spain and Turkey. For each jurisdiction, the website now provides direct links to specific national legal databases accessible to all users.

20. More specifically, at the date of this Secretariat's Note the database included concise background notes on 47 Contracting States, 2,024 original-language decisions, 129 English-language translations, 1,148 summaries of cases, the *travaux préparatoires* and a bibliography on the New York Convention which consists of the most comprehensive directory of publications relating to the application and interpretation of such text (listing 884 books and articles from more than 76 countries in 11 different languages; 236 of such publications are directly accessible through hyperlinks).

21. The website has a new page dedicated to the events on the UNCITRAL Secretariat Guide on the New York Convention which have taken place over the past months (including in Hong Kong, New York, Nigeria and Paris, of which videos are accessible online).

22. As in previous years, close coordination between the website and the CLOUT system continued to be maintained. Several cases on the application of the New York Convention were published in both systems, which allowed for such cases to be available in the six official languages of the United Nations.

23. Finally, hardback special editions of the UNCITRAL Secretariat Guide on the New York Convention are now available in French and in English.